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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131113952-7147-03]

RIN 0648-BD78

**Snapper-Grouper Fishery off the Southern Atlantic States;
Regulatory Amendment 16; Technical Amendment**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is hereby making a technical amendment to our regulations without altering the substance of the regulations. These changes will clarify our regulations to make them more easily understood by the public. As a result of a previously published final rule to implement Regulatory Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), that published in the **Federal Register** on December 29, 2016, NMFS has identified a section of the regulations for black sea bass pot commercial trip limits in need of clarification. This rule does not make any substantive changes to the regulations governing South Atlantic snapper-grouper or to other species managed by NMFS.

DATES: This final rule is effective [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Regulatory Amendment 16, which includes an environmental impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at https://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2013/reg_am16/index.html.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, 727-824-5305; e-mail: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: Black sea bass is in the snapper-grouper fishery and is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 29, 2016, NMFS published the final rule for Regulatory Amendment 16 (81 FR 95893). The final rule for Regulatory Amendment 16 revised the seasonal prohibition on the use of black sea bass pot gear in the South Atlantic and added an additional gear marking requirement for black sea bass pot gear. The purpose of that final rule was to reduce the adverse

socioeconomic impacts from the previous seasonal black sea bass pot gear prohibition while continuing to protect Endangered Species Act listed North Atlantic right whales in the South Atlantic. That final rule also required additional gear markings to help identify black sea bass pot gear in the South Atlantic. This technical amendment to that final rule clarifies that black sea bass pot commercial trip limits are meant to be in effect year-round.

Background

On June 1, 2012, NMFS published the final rule for Amendment 18A to the FMP (77 FR 32408). Among the measures in Amendment 18A was the establishment of a year-round commercial trip limit of 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight.

On September 23, 2013, NMFS published the final rule for Regulatory Amendment 19 to the FMP (78 FR 58249). Regulatory Amendment 19 established an annual prohibition on the use of black sea bass pot gear from November through April.

On November 7, 2014, NMFS published the final rule for Regulatory Amendment 14 to the FMP (79 FR 66316). One of the measures implemented through Regulatory Amendment 14 was the establishment of a 300 lb (136-kg), gutted weight; 354 lb (161

kg), round weight, commercial trip limit for the black sea bass hook-and-line component in the South Atlantic from January 1 through April 30, each year. In addition, NMFS changed the commercial trip limit for the black sea bass pot component from year-round to May 1 through October 31, each year. The intent of referencing the May through October dates for the black sea bass pot commercial trip limit was because at that time, May through October was the only time period that pots could be fished. The final rule for Regulatory Amendment 14 simply clarified the seasonal differences in commercial trip limits among the different black sea bass gear components (pots and hook-and-line) in the commercial sector.

The final rule for Regulatory Amendment 16 revised the black sea bass pot seasonal prohibition. As of December 29, 2016, sea bass pots are allowed to be fished year-round in specific areas in the South Atlantic. During the development of the rulemaking to implement Regulatory Amendment 16, NMFS inadvertently did not revise the relevant regulatory text to correctly reference that the commercial trip limits for black sea bass fishers are meant to be in effect year-round. However, the South Atlantic Fishery Management Council's stated intent in Regulatory Amendment 16 was to retain the 1,000 lb (454 kg),

gutted weight; 1,180 lb (535 kg), round weight, year-round commercial trip limit for the black sea bass pot sector originally implemented in 2012.

Correction

Currently, the regulations at § 622.191(a)(8)(ii) contain a reference that the 1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight, commercial trip limit is only applicable from May 1 through October 31. The May 1 through October 31 condition was added to clarify the seasonal differences in commercial trip limits among the hook-and-line and black sea bass pot components in the commercial sector. As currently written, the regulations at § 622.191(a)(8)(ii) incorrectly have no commercial trip limit in place from November 1 through April 30. As had been described in Regulatory Amendment 16, the intent by NMFS and the South Atlantic Fishery Management Council was for the commercial trip limit for sea bass pots to be in effect year-round.

This technical amendment corrects the text within § 622.191(a)(8)(ii) to accurately state that the black sea bass pot trip limit is in effect year-round.

Classification

The Regional Administrator, Southeast Region, NMFS, has

determined this final rule is necessary for the conservation and management of South Atlantic black sea bass and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this regulatory clarification constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b) (B) of the Administrative Procedure Act (APA), because prior notice and opportunity for public comment on this final rule is unnecessary and contrary to the public interest. Such procedures are unnecessary and contrary to the public interest, because the rules establishing the commercial trip limits and the seasonal closures have already been subject to notice and comment and not immediately correcting the regulatory text would result in confusion and uncertainty for the affected entities.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this

action under 5 U.S.C. 553(d)(3).

These measures are thus exempt from the procedures of the Regulatory Flexibility Act because prior notice and comment have been waived under the APA.

List of Subjects in 50 CFR Part 622

Black Sea Bass, Commercial Trip Limits, Fisheries,
Fishing, South Atlantic.

Dated: February 14, 2017.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator for
Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.191, revise paragraph (a)(8)(ii) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(8) * * *

(ii) Sea bass pot component. Until the applicable quota specified in § 622.190(a)(5) is reached--1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight.

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